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इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 27th July, 1992:—

BILL No. XLIX OF 1992

A Bill further to amend the Indian Contract Act, 1872.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. This Act may be called the Indian Contract (Amendment) Act, 1992.

Short
title.

9 of 1872.

2. In section 28 of the Indian Contract Act, 1872, for the portion beginning with the words "Every agreement" and ending with the words "is void to that extent," the following shall be substituted, namely:—

Amend-
ment of
section
28.

"Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to that extent."

STATEMENT OF OBJECTS AND REASONS

The Law Commission of India has recommended in its 97th report that section 28 of the Indian Contract Act, 1872 may be amended so that the anomalous situation created by the existing section may be rectified. It has been held by the courts that the said section 28 shall invalidate only a clause in any agreement which restricts any party thereto from enforcing his rights absolutely or which limits the time within which he may enforce his rights. The courts have, however, held that this section shall not come into operation when the contractual term spells out an extinction of the right of a party to sue or spells out the discharge of a party from all liability in respect of the claim. What is thus hit by section 28 is an agreement relinquishing the remedy only i.e. where the time-limit specified in the agreement is shorter than the period of limitation provided by law. A distinction is assumed to exist between remedy and right and this distinction is the basis of the present position under which a clause barring a remedy is void, but a clause extinguishing the rights is valid. This approach may be sound in theory but, in practice, it causes serious hardship and might even be abused.

2. It is felt that section 28 of the Indian Contract Act, 1872 should be amended as it harms the interests of the consumer dealing with big corporations and causes serious hardship to those who are economically disadvantaged.

3. The Bill seeks to achieve the above objects.

K. VIJAYA BHASKARA REDDY.

SUDARSHAN AGARWAL,
Secretary-General.